



**BRIEFING: NOVEMBER 18, 2014 BOARD MEETING AGENDA ITEM # 5**

**TO: Chairman Richard and Authority Board Members**

**FROM: James Andrew, Assistant Chief Counsel**

**DATE: November 18, 2014**

**RE: Consider Making Findings Pursuant to Government Code Section 51292 (Agricultural Preserve/Williamson Act) for Four Additional Parcels under Williamson Act Contract in Madera and Fresno Counties**

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**Summary of Requested Action**

At the Board's August and September Board meetings, the Board made legally-required findings under Government Code Section 51292. The findings concerned all the land parcels under Williamson Act contracts in Madera and Fresno counties that are necessary (small portions of which, in most cases) for the high-speed rail program. Further research and evolution of the right-of-way process since those two Board meetings has identified four additional parcels in those counties the high-speed rail project will require (again, small portions). One of these parcels is in Madera County (see Exhibit 1). The other three parcels are in Fresno County (see Exhibit 2). Accordingly, in this item at this November meeting, staff requests the Board make the same findings previously made, as pertains to these additional four parcels. The Board would make these findings by adopting draft Resolution #HSRA 14-35, attached hereto.

**Discussion and Background**

The Williamson Act requires<sup>1</sup> that, prior to acquiring land for a public improvement that is within a designated agricultural preserve, the public agency implementing the improvement make certain findings. The findings are: (a) the land is not being selected because of its lower property value given it is in an agricultural preserve; and, (b) there are no reasonably feasible alternative locations for the improvement.

***Williamson Act***

Generally speaking, the Williamson Act (Government Code section 51200 et seq.) allows an owner of certain farmlands to enter into a contract with the local County that requires the owner

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<sup>1</sup> The basic background information in this memorandum about the Williamson Act and its requirements is the same as in the August and September Board memoranda, but is repeated here for completeness.

to keep the property in agricultural use/production for a period of time, usually 10 years. In return, the County agrees to tax the property at a valuation based on agricultural use rather than some higher value based on a speculative non-agricultural use of the property – particularly important for agricultural property located near urban areas that could be subject to development pressures.

### ***Steps in Williamson Act Compliance***

In carrying out the high-speed rail project, the Authority must comply with the requirements of the Williamson Act, Government Code sections 51291 and 51292. The Williamson Act requires three specific steps.

In the first step, the Authority must provide notification to the Department of Conservation and the local land use authority whenever it appears that land within an agricultural preserve may be required for a public use. (Gov. Code, § 51291(b).) The notification must include, among other things, an explanation of the Authority’s preliminary consideration of the findings required pursuant to Government Code section 51292, which states:

*“No public agency or person shall locate a public improvement within an agricultural preserve<sup>2</sup> unless the following findings are made:*

- (a) The location is not based primarily on a consideration of the lower cost of acquiring land in an agricultural preserve.*
- (b) If the land is agricultural land covered under a contract pursuant to this chapter for any public improvement, that there is no other land within or outside the preserve on which it is reasonably feasible to locate the public improvement.”*

The Authority has accomplished this notification step through staff-level communications to the Department of Conservation and both Madera County and Fresno County for the four parcels in this agenda item.

In the second step, the Williamson Act also requires the Authority Board to make the findings under Government Code section 51292 prior to acquiring land that is within an agricultural preserve or subject to a Williamson Act contract. This step is the subject of this agenda item and is discussed further below.

In the third step, the Authority must provide notice to the Department of Conservation after acquiring land that is within an agricultural preserve.

For parcels subject to Williamson Act contracts, like the parcels that are the subject of this agenda item, the Authority intends to negotiate the purchase with willing sellers. However,

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<sup>2</sup> All properties that have a Williamson Act contract (like the one that is the subject of this Board item) are in locally-designated “agricultural preserves.” The steps described in this memorandum apply to all properties in an agricultural preserve.

where the Authority is unable to do so, the Authority will acquire the properties pursuant to eminent domain. When acquired either under eminent domain, or in lieu of eminent domain, the contract will terminate as to the land acquired at the time of acquisition.

The Authority intends to acquire a portion of the parcel listed in Table 1 within Madera County that is subject to a Williamson Act contract. The acquisition area is part of CP 1, and is shown on the attached Exhibit 1. The Authority also intends to acquire portions of the three parcels listed in Table 2 within Fresno County that are subject to Williamson Act contracts. The acquisition of these parcels is part of CP 1 and CP 2-3 and are shown on the attached Exhibit 2.

The findings required by Government Code section 51292 can be made for acquisition of these parcels for the following reasons:

**Findings Required by Government Code Section 51292 – Madera County<sup>3</sup>**

The additional parcel in Madera County a portion of which is necessary for the high-speed rail program is shown below in Table 1.

<p><b>Table 1</b> <b>Madera County parcel and Williamson Act contract</b></p>				
<b>Parcels (HST#)</b>	<b>Parcels (APN)</b>	<b>Existing Acreage</b>	<b>Remainder Acreage</b>	<b>WA Contract #</b>
MF-20-0934	047-070-013	111.11	108.93	2187-C-75

*The location of the high-speed rail alignment in the Merced to Fresno section of the statewide system is not based primarily on a consideration of the lower cost of acquiring land in an agricultural preserve.* As explained in the 2012 Merced to Fresno Final EIR/EIS, the high-speed rail system has been established as an approximately 800-mile train system with the purpose of providing a reliable high-speed electric train service that links the major metropolitan areas of the state and that delivers predictable and consistent travel times. (MF Final EIR/EIS, § 1.2.1.) The Merced to Fresno section is an essential part of the statewide high-speed rail system and connects the San Joaquin Valley with the rest of the system. (§ 1.2.3.) high-speed rail service to stations in Merced and Fresno were identified as part of the statewide system in 2005, with an alignment along either the UPRR or BNSF rail corridors. (Resolution # HSRA 05-01; Statewide Program Final EIR/EIS, ch. 6A; Merced to Fresno Final EIR/EIS, § 2.1.2.) Corridors for the high-speed rail system along the coastal corridor and I-5 corridor were eliminated from study at the program level because they were determined to not sufficiently meet the project purpose and need in terms of ridership potential, connectivity, and accessibility. (Statewide Program Final

<sup>3</sup> The findings in this memorandum are separated between Madera County and Fresno County because the Madera parcel is covered by the Merced-Fresno EIR (the main supporting information) and the Fresno parcels (south of the station) are covered by the Fresno-Bakersfield EIR.

EIR/EIS, § 2.6.8.) The main “backbone” of the high-speed rail system runs through the Central Valley, rather than avoiding it, specifically to provide transportation connectivity to the intermediate markets in Merced and Fresno, as well as others.

The Authority based its selected location for the alignment between Merced and Fresno – the Hybrid Alternative - on a multiplicity of factors, as evidenced in the MF Final EIR/EIS, and not primarily on the lower cost of acquiring land in an agricultural preserve. (Resolution #HSRA 12-20.) Factors the Authority weighed in selecting the Hybrid Alternative included natural resource impacts, community resources impacts including impacted agricultural lands, capital costs, constructability issues, and regulatory considerations. (MF Final EIR/EIS, chapter 7.) Importantly, the alternatives studied in the EIR/EIS presented a range of impacts on agricultural lands and a range of impacts on parcels subject to Williamson Act contracts. The selected Hybrid Alternative had higher acreage and parcel impacts for Williamson Act and Farmland Security Zone contracts than the UPRR/SR 99 alternative, but fewer than the BNSF alternative. In addition, the Corps of Engineers and the US Environmental Protection Agency concurred that the Hybrid Alternative was the least environmentally damaging practicable alternative, allowing it to qualify for obtaining a Clean Water Act section 404 permit rather than the other alternatives studied in the MF EIR/EIS. (March 23, 2012, letter from C. Dunning, US EPA, to David Valenstein, FRA, and Tom Fellenz, CHSRA, re: Response to Checkpoint C; March 26, 2012, Letter from M. Jewell, ACOE, to Mark McLoughlin, CHSRA, re: Checkpoint C.) Lastly, project cost estimates contained in the MF Final EIR/EIS included property acquisition costs based on market land values assuming none of the properties had Williamson Act contracts.

***For the agricultural parcels under Williamson Act contracts that are planned for acquisition, there is no other land within or outside the agricultural preserve on which it is reasonably feasible to locate the high-speed rail project.*** As explained above, the fundamental purpose of the high-speed rail system includes connecting the major metropolitan areas of the state, including the cities of Merced and Fresno along with the north and the south parts of the state. It is not physically feasible to place a new linear transportation corridors connecting the Los Angeles and San Diego in the south with San Francisco and Sacramento in the north, and also serving Merced and Fresno, without crossing any lands in an agricultural preserve.

Moreover, the high-speed rail system has unique performance criteria that require, among other things, a guideway with access control, specific track geometry for passenger comfort, capability of safe and efficient operations at speeds over 200 mph, a fully dual track mainline with off-line station stopping tracks, and capable of normal maintenance activities without disrupting operations. (MF Final EIR/EIS, Table 2-1.) These performance criteria, particularly the speed criteria, require a track alignment that has greater spiral and curve radii – meaning that for

the track alignment to change elevation or to curve to avoid a particular feature requires the considerable distance of 1,800 feet. This factor in particular constrains the high-speed rail design from incorporating refinements that could avoid parcels in agricultural preserves entirely on a parcel-by-parcel basis.

Similarly, the plan for the high-speed rail system to be fully grade separated in CP 1 means roads will be grade separated, and the design of the roadway grade separations must conform to local design speed requirements, or a county-approved variance must be obtained. It is therefore not feasible to revise the design of road overcrossings and undercrossings to make them narrower or with sharper curves, because this would reduce the design speeds and be out of conformance with local requirements. The overcrossings would not be owned and maintained by the Authority. They would be maintained by Madera County. Therefore, the overcrossings are designed pursuant to Madera County's design criteria, which require 4:1 slopes instead of 2:1 slope for maintenance and stability reasons. The gentler slope result in a larger amount of farmland incorporated into the project.

In addition, as disclosed in the MF Final EIR/EIS, the area along the UPRR and BNSF corridors between Merced and Fresno both contain acreage of prime farmland and parcels subject to Williamson Act contracts. (Figure 3.14-9, Table 3.14-6.) While the alternatives considered present a range of impacts to land within agricultural preserves, none of the alternatives avoid this land entirely.

Finally, this parcel is far greater in size than the county minimum size, so the portion the Authority does not use for this project will remain under the protections of the Williamson Act.

### **Findings Required by Government Code Section 51292 – Fresno County**

The three additional parcels in Fresno county portions of which are necessary for the high-speed rail program are shown below in Table 2.

**Table 2  
Fresno County parcels and Williamson Act contract**

<b>Parcels (HST#)</b>	<b>Parcels (APN)</b>	<b>Existing Acreage</b>	<b>Remainder Acreage</b>	<b>WA Contract #</b>
FB-10-0604	334-040-34	18.66	18.65	7001
FB-10-0731	056-030-52s	32.90	32.84	0731
FB-10-0692	335-090-42	17.51	17.41	0692

*The location of the high-speed rail alignment in the Fresno to Bakersfield section of the statewide system is not based primarily on a consideration of the lower cost of*

***acquiring land in an agricultural preserve.*** As explained in the 2014 Fresno to Bakersfield Final EIR/EIS, the high-speed rail system has been established as an approximately 800-mile train system with the purpose of providing a reliable high-speed electric train service that links the major metropolitan areas of the state and that delivers predictable and consistent travel times. (FB Final EIR/EIS, § 1.2.1.) The Fresno to Bakersfield section is an essential part of the statewide high-speed rail system and connects the San Joaquin Valley with the rest of the system. (§ 1.2.2.) high-speed rail service to stations in Fresno and Bakersfield were identified as part of the statewide system in 2005 through the program environmental review process. (Resolution #HSRA 05-01; Statewide Program Final EIR/EIS, Ch. 6A; Fresno to Bakersfield Final EIR/EIS, § 2.1.2.) Corridors for the high-speed rail system along the coastal corridor and I-5 corridor were eliminated from study at the program level because they were determined to not sufficiently meet the project purpose and need in terms of ridership potential, connectivity, and accessibility. (Statewide Final EIR/EIS, § 2.6.8.) The main “backbone” of the high-speed rail system runs through the Central Valley, rather than avoiding it, specifically to provide transportation connectivity to the intermediate markets in Fresno and Bakersfield, as well as others.

The Authority based its selected location for the alignment between Fresno and Bakersfield project on a multiplicity of factors, as evidenced in the FB Final EIR/EIS, and not primarily on the lower cost of acquiring land in an agricultural preserve. (Resolution #HSRA 14-10.) Factors the Authority weighed in selecting the Preferred Alternative included natural resource impacts, community resources impacts including impacted agricultural lands, capital costs, constructability issues, and regulatory considerations. (FB Final EIR/EIS, chapter 7.) Importantly, the alternatives studied in the EIR/EIS presented a range of impacts on agricultural lands and a range of impacts on parcels subject to Williamson Act contracts. The route/alternative the Board selected in May 2014 (the Preferred Alternative) had fewer acreage and parcel impacts for Important Farmland and Williamson Act contracts than, for example, the BNSF alternative that the Board did not select. (FB Final EIR/EIS, Table 7.2, “Community Resource Impacts in the Fresno to Bakersfield Section”.) In addition, the Corps of Engineers and the US Environmental Protection Agency concurred that the Preferred Alternative was the least environmentally damaging practicable alternative, allowing it to qualify for obtaining a Clean Water Act section 404 permit rather than the other alternatives studied in the EIR/EIS. (December 19, 2013, letter from M. Jewell, USACE, to Mark McLoughlin, CHSRA and a December 19, 2013, letter from C. Dunning, US EPA, to David Valenstein, FRA, and Mark McLoughlin, CHSRA, re: Response to November 2013 Request for Agreement on “Checkpoint C” – Preliminary Least Environmentally Damaging Practicable Alternative and Draft Mitigation Plan for California High-Speed Rail Project Fresno to Bakersfield Section.) Lastly, project cost estimates contained in the Final EIR/EIS included property acquisition costs based on market land values assuming none of the properties had Williamson Act contracts or were within agricultural preserves.

***For the agricultural parcels under Williamson Act contracts that are planned for acquisition, there is no other land within or outside the agricultural preserve on which***

*it is reasonably feasible to locate the high-speed rail project.* As explained above, the fundamental purpose of the high-speed rail system includes connecting the major metropolitan areas of the state, including the cities of Fresno and Bakersfield along with the north and the south parts of the state. Physically, it is not reasonably feasible to place a new linear transportation corridors connecting Los Angeles and San Diego in the south with San Francisco and Sacramento in the north, and also serving Fresno and Bakersfield, without crossing any lands in an agricultural preserve.

Moreover, the high-speed rail system has unique performance criteria that require, among other things, a guideway with access control, specific track geometry for passenger comfort, capability of safe and efficient operations at speeds over 200 mph, a fully dual track mainline with off-line station stopping tracks, and capable of normal maintenance activities without disrupting operations. (FB Final EIR/EIS, Table 2-1.) These performance criteria, particularly the speed criteria, require a track alignment that has greater spiral and curve radii – meaning that for the track alignment to change elevation or to curve to avoid a particular feature requires the considerable distance of 1,800 feet. This factor in particular constrains the high-speed rail design from incorporating refinements that could avoid parcels in agricultural preserves entirely on a parcel-by-parcel basis.

Similarly, the plan for the high-speed rail system to be fully grade separated in CP 1 and 2/3 requires that the system have no at-grade crossings between the high-speed rail guideway and perpendicular roads. Roads will be grade separated, and the design of the roadway grade separations are best done in conformance with local design speed requirements. It is therefore not reasonably feasible to revise the design of road overcrossings and undercrossings to make them narrower or with sharper curves, because this would reduce the design speeds and be out of preferred conformance with local requirements. The overcrossings generally would not be owned and maintained by the Authority. They would be maintained by the respective county. Therefore, the overcrossings are designed pursuant to the respective county's design criteria, which involves 4:1 slopes instead of 2:1 slope for maintenance and stability reasons. The gentler slope results in a larger amount of farmland incorporated into the project.

Finally, one of these parcels is greater in size than the county minimum size, so the portion that the Authority does not use for the project will remain under the protections of the Williamson Act. The other two parcels are already (i.e., even without high-speed rail) under the county minimum parcel size.

Although the linear nature and location of the high-speed rail alignment requires the acquisition of some parcels that are subject to Williamson Act contracts and within agricultural preserves (i.e., avoiding these parcels entirely is not feasible), the Authority has taken a number of steps to reduce adverse impacts to agricultural lands. Specifically, the Authority has entered into an agreement with the Department of Conservation Farmland Conservancy Program to fund the purchase of agricultural conservation easements on farmland from willing sellers in the Merced to Fresno and Fresno to Bakersfield sections. This program will preserve eligible farmland in an amount commensurate with the quantity and quality of the taken/converted farmlands, within the

same agricultural regions as the impacts occur, at a replacement ratio of not less than 1:1 for lands that have been converted from agricultural use. In addition, the Authority will provide an additional increment of Important Farmland mitigation acreage, above the 1:1 minimum ratio, at a level consistent with the terms of a settlement agreement the Authority reached with agricultural interests in *County of Madera, et al. v. California High-Speed Rail Authority*.

### **Staff Recommendation**

Staff recommends that the Board adopt the attached draft Resolution #HSRA 14-35 adopting the findings required by Government Code section 51292 for the single Madera County parcel shown in Exhibit 1 and listed in Table 1 and the three Fresno County parcels shown in Exhibit 2 and listed in Table 2.

### **Attachments**

- Exhibit 1: Map Showing Affected Parcel and Williamson Act Contract in CP 1 (Madera County)
- Exhibit 2: Map Showing Affected Parcels and Williamson Act Contract in CP 1 and CP 2-3 (Fresno County)
- Draft Resolution #HSRA 14-35